

Calendar No. 267

106TH CONGRESS }
1st Session }

SENATE

{ REPORT
106-146

INDEPENDENT OFFICE OF ADVOCACY ACT

AUGUST 27, 1999.—Ordered to be printed

Filed under authority of the order of the Senate of August 5, 1999

Mr. BOND, from the Committee on Small Business,
submitted the following

REPORT

[To accompany S. 1346]

The Committee on Small Business, to which was referred the bill (S. 1346) to ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

On July 15, 1999, the Committee on Small Business considered S. 1346. The Committee adopted an amendment offered by Chairman Bond and Ranking Democrat Kerry. As amended, the bill provides for the independent and nonpartisan operation of the Office of Advocacy of the Small Business Administration. Having considered S. 1346, as amended, the Committee reports favorably thereon without further amendment and recommends that the bill do pass.

I. NEED FOR LEGISLATION

The Office of Advocacy is a unique office within the Federal government. It is part of the Small Business Administration (SBA/Agency), and its director, the Chief Counsel for Advocacy, is nominated by the President and confirmed by the Senate. At the same time, the Office is also intended to be the independent voice for small business within the Federal government. It is supposed to develop proposals for changing government policies to help small businesses and to represent the views and interests of small businesses before other Federal agencies.

The General Accounting Office (GAO) recently published a report on personnel practices at the SBA (GAO/GGD-99-68). The GAO re-

ported that Assistant and Regional Advocates hired by the Office of Advocacy share many of the attributes of Schedule C political appointees. Regional Advocates, who are senior staff in the Office of Advocacy, are frequently cleared by the White House personnel office, which is the same procedure followed for approving Schedule C and non-career SES political appointees. The report raises questions, concerns and suspicions regarding the independence of the Office of Advocacy, and the Committee approves legislation to address issues raised in the report.

The Independent Office of Advocacy Act responds to these concerns and is designed to build a firewall to prevent the political intrusion into the management of day-to-day operations of the Office of Advocacy. The bill requires that the SBA's budget include a separate account for the Office of Advocacy. No longer would its funds come from the general operating account of the Agency. The separate account would also provide for the number of full-time employees who would work within the Office of Advocacy. No longer would the Chief Counsel for Advocacy have to seek approval from the SBA Administrator to hire staff for the Office of Advocacy.

The bill also continues the practice of allowing the Chief Counsel to hire individuals critical to the mission of the Office of Advocacy without going through the normal competitive procedures directed by federal law and the Office of Personnel Management (OPM). The special hiring authority, which is limited only to employees within the Office of Advocacy, is beneficial because it allows the Chief Counsel to hire quickly those persons who can best assist the Office in responding to changing issues and problems confronting small businesses.

As the director of the Office of Advocacy, the Chief Counsel for Advocacy has a dual responsibility. On the one hand, this individual is the independent watchdog for small business. On the other hand, he or she is also a part of the President's Administration. These two roles are sometimes very difficult roles to play simultaneously.

The Independent Office of Advocacy Act is designed to make the Office of Advocacy and the Chief Counsel for Advocacy a fully independent advocate within the Executive Branch acting on behalf of the small business community. The bill would establish a clear mandate that the Office of Advocacy will continue to fight on behalf of small businesses regardless of the position taken on critical issues by the President and the Administration.

The Office of Advocacy as envisioned by the Independent Office of Advocacy Act will be unique within the Executive Branch. The Chief Counsel for Advocacy will be a wide-ranging advocate, who will be free to advocate change in government programs and attitudes as they impact small businesses.

In 1976, Congress established the Office of Advocacy in the SBA to be the eyes, ears and voice for small business within the Federal government. Over time, it has been assumed that the Office of Advocacy is the "independent" voice for small business. While the Committee believes that the Office of Advocacy and the Chief Counsel should be independent and free to continue to advocate or support positions that might be contrary to the Administration's

policies, it has become apparent the Office is not as independent as necessary to do the job adequately for small business.

For example, funding for the Office of Advocacy comes from the Salaries and Expense Account of the SBA's budget. Staffing is allocated by the SBA Administrator to the Office of Advocacy from the overall staff allocation for the Agency. In 1990, there were 70 full-time employees working on behalf of small businesses in the Office of Advocacy. The FY 1999 allocation of staff is 49, and fewer are actually on-board as the result of the hiring freeze imposed by the SBA Administrator. The independence of the Office is diminished when the Office of Advocacy staff is reduced to allow for increased staffing for new programs and additional initiatives in other areas of SBA, at the discretion of the Administrator.

II. DESCRIPTION OF THE BILL

The Independent Office of Advocacy Act (S. 1346) provides for an effective, independent advocate for small business within the Federal government that is not restricted by the views or policies of the Small Business Administration (SBA/Agency) or any other agency. The Act is designed to make the Office of Advocacy and the Chief Counsel for Advocacy a full independent advocate within the Executive Branch acting on behalf of the small business community.

Under this bill, the Office of Advocacy will be unique within the Executive Branch. The Chief Counsel for Advocacy will be a wide-ranging advocate, who will be free to take positions contrary to the Administration's policies and to advocate change in government programs and attitudes as they impact small business.

The Act establishes for the first time in the Small Business Act that the Office of Advocacy has the statutory independence and adequate financial resources to be an advocate for the small business community. In addition to the statement of the Office's independence, the bill provides for a separate authorization to fund the Office of Advocacy. As designed in this bill, its annual budget would be a separate account in the SBA budget, similar to the separate accounts for the Office of Inspector General and the Business Loans Program. SBA is directed to provide appropriate and adequate office space at the SBA headquarters and its field office locations, together with equipment, office supplies, and communications facilities and services as are necessary to support the requirements of the Office of Advocacy.

Each appropriation request submitted by the Administration to the Congress would also provide for the number of full-time employees who would work within the Office of Advocacy. The Chief Counsel for Advocacy would not need the approval of the SBA Administrator to hire staff. The bill continues the practice of allowing the Chief Counsel to hire individuals critical to the mission of the Office of Advocacy without going through the normal competitive procedures directed by federal law and the Office of Personnel Management (OPM).

Section 4 of the Independent Office of Advocacy Act sets forth in detail the functions of the Office of Advocacy as intended by the Congress. The Chief Counsel will head up the Office of Advocacy. The Chief Counsel will be appointed by the President from civilian

life with the advice and consent of the Senate without regard to the person's political affiliation. To be eligible for the position, the nominee cannot have served in any position at SBA during the preceding five years of the appointment.

Because of the independent nature of the office, the Committee established the office in such a manner so that the incumbent Chief Counsel would not feel that his or her job were in jeopardy by taking a position critical of or in opposition to an Administration initiative. To strengthen this position, the bill provides that the President must notify the Congress 30 days in advance before removing the Chief Counsel from office.

Section 4 sets forth the primary functions of the Office of Advocacy, which the Committee views as wide-ranging and comprehensive insofar as are the needs and problems confronting small businesses nationwide. In setting forth the responsibilities of the Office of Advocacy, the Committee intends for the Office to serve as focal point to receive complaints, criticisms and suggestions concerning the policies and programs of the federal government that affect small businesses.

The Committee believes that the authority enunciated in Section 4 is significant, and it included a specific subsection (g) "Information From Federal Agencies" to enable the Office and the Chief Counsel to carry out its responsibilities. Basically, the Committee directs each Federal agency to provide to the Chief Counsel all information that the Chief Counsel believes is necessary in carrying out the responsibilities of the Office of Advocacy.

In addition, the section spells out special powers that are conferred on the Chief Counsel. Without regard for the civil service laws and regulations, the Chief Counsel may hire and terminate those individuals who are considered necessary to carry out the duties of the Office. This subsection is intended to include the regular staff of the office of Advocacy and such consultants and experts on a temporary or intermittent basis that the Chief Counsel may choose to hire. The hiring authority rests with the Chief Counsel. Nothing in the Act should be interpreted to require that the Chief Counsel obtain the approval, concurrence or review by the SBA Administrator or any other person within the Administration. The authority of the Chief Counsel to hire staff, consultants and experts will be limited by the amounts appropriated annually by the Congress.

Section 4 also includes a requirement that the Administrator of SBA provide the Office of Advocacy with adequate office space, equipment, office supplies, and communications facilities and services both in SBA's central offices and field offices that are deemed necessary for the efficient and effective operation of the Office of Advocacy. This provision is similar to the requirement for SBA to support the Office of Inspector General.

The bill requires and authorizes the Chief Counsel to submit certain reports to the President and the Congress, including an annual report on the Regulatory Flexibility Act. The Committee believes strongly that these reports should not be subject to the mandatory review and editing that has historically been required by past and current Administrations. In order for the Committee to carry out its responsibilities on behalf of the small business com-

munity, it is important that it receive regular reports from the Chief Counsel that have not been submitted to the Office of Management and Budget or any other Federal department or agency for editing and/or approval.

The bill authorizes such sums as are necessary for carrying out the responsibilities of the Office of Advocacy. The amounts appropriated should remain available until spent and should not be limited to fiscal year limitations. This subsection is intended to give the Chief Counsel the flexibility to respond to matters that come before the Office of Advocacy without the pressures of obligating funds, perhaps prematurely, prior to the end of a fiscal year.

Since there is a sitting Chief Counsel for Advocacy who was reviewed and approved by the Committee and the full Senate, it is the intention of the Committee that the incumbent will continue to serve subject to the requirements of this bill once enacted.

III. COMMITTEE VOTE

In compliance with rule XXVI(7)(b) of the Standing Rules of the Senate, the following votes on S. 1346 were recorded on July 15, 1999. A motion by Senator Bond to adopt an amendment offered by Senator Bond and Senator Kerry passed by a unanimous voice vote. A motion by Senator Bond to adopt the Independent Office of Advocacy Act, with an amendment, was approved by a unanimous recorded vote, with the following Senators voting in the affirmative: Bond, Kerry, Burns, Coverdell, Bennett, Snowe, Enzi, Fitzgerald, Crapo, Abraham, Levin, Harkin, Lieberman, Wellstone, Cleland, Landrieu and Edwards.

IV. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 23, 1999.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1346, the Independent Office of Advocacy Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1346—Independent Office of Advocacy Act

S. 1346 would authorize the appropriation of such sums as may be necessary for the Office of Advocacy within the Small Business

Administration (SBA). The bill would clarify the office's role and would codify requirements for reports to the Congress on issues and regulations affecting small businesses.

Based on information from the SBA, CBO estimates that the office will spend about \$4 million in 1999. Assuming appropriations of the necessary amounts, we estimate that SBA would spend about \$5 million a year over the 2000–2004 period to implement S. 1346. The increase in estimated costs would primarily cover anticipated inflation.

S. 1346 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 1346 contains no intergovernment or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact is Mark Hadley. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact of the personal privacy of companies or individuals who utilize the assistance authorized by this legislation.

VI. CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of rule XXVI(12) of the Standing Rules of the Senate in order to expedite the business of the Senate.

VI. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The Act is titled the "Independent Office of Advocacy Act."

Section 2. Findings

This section describes the need for an effective, independent advocate for small business within the Federal government that is not restricted by the views or policies of the Small Business Administration (SBA/Agency) or any other agency. This section also sets forth the important role the Office of Advocacy plays in providing research, information and its expertise on small business matters to the Congress and the Executive Branch.

Section 3. Purposes

This section states that the purpose of the Act is to ensure that the Office of Advocacy has the statutory independence and adequate financial resources to be an advocate for small business. The Office of Advocacy is directed to keep the Senate and House Small Business Committees and the SBA Administrator informed on matters of importance to small businesses.

Subsection 3 provides that there will be a separate authorization for the Office of Advocacy.

Subsections 4 states that the Office of Advocacy will continue to monitor Agency compliance with the Regulatory Flexibility Act and will report annually to the Congress. Subsection 5 states that the purpose of the Act is to enhance the role of the Office of Advocacy in the panel review process.

Section 4. Office of Advocacy

Subsection (a) sets forth a new Section 32 of the Small Business Act (15 U.S.C. 631 et seq.) describing the Office of Advocacy.

Subsection (a) of Section 32 of the Small Business Act defines the terms “Chief Counsel” and “Office” as used in Section 32.

Subsection (b) of Section 32 establishes within SBA the Office of Advocacy and designates the Chief Counsel for Advocacy to manage the Office. This subsection sets forth the restrictions on who may be nominated by the President to serve as Chief Counsel. Subsection (b) also requires SBA to submit a separate budget request each year for the Office of Advocacy.

Subsection (c) of Section 32 describes the primary functions of the Office of Advocacy:

- (1) The Office shall examine the role played by small business within the U.S. economy;
- (2) Directs the Office to examine the effectiveness of Federal subsidy and assistance programs;
- (3) The Office is directed to measure the direct costs of regulation on small business;
- (4) Determine the impact of the U.S. tax system on small businesses;
- (5) Study the ability to the private sector to meet the credit needs of small business and determine the impact of government demands for credit on small businesses;
- (6) Determine the availability of credit and management assistance to small businesses;
- (7) Evaluate the efforts of Federal agencies and the private sector to help minority-owned and women-owned small businesses;
- (8) Make recommendations to help in the development and strengthening of minority-and women-owned small businesses;
- (9) Directs the Office of Advocacy to make recommendations to help small business expand to their full potential and to assess any common reasons for businesses success and failures;
- (10) Develop a set of criteria to be used to define small businesses; and
- (11) Make recommendations on issues and regulations affecting small business.

Subsection (d) of Section 32 describes additional functions of the Office of Advocacy. It will serve as a focal point for receipt of complaints, criticisms and suggestions concerning the policies and programs of the Federal government that affect small businesses. The Office will counsel small businesses on how to resolve their difficulties with the Federal government. The Office will represent the interests and views of small businesses before other Federal agencies, and it will encourage both private and public entities to disseminate information about services and programs for small businesses. Lastly, Subsection (d) directs the Office of Advocacy to carry out its responsibilities under the Regulatory Flexibility Act.

Subsection (e) of Section 32 outlines the staff and powers of the Office of Advocacy. The Chief Counsel has the authority to hire staff for the Office of Advocacy and is exempt from the standard civil service laws governing competitive hiring.

Subsection (f) of Section 32 directs SBA to provide the Office of Advocacy with adequate office space in the headquarters and field offices. SBA shall also provide equipment, office supplies, and communications facilities and services as are necessary.

Subsection (g) of Section 32 allows for the Chief Counsel to obtain from each Federal agency such information as needed to carry out the responsibilities of the Office of Advocacy.

Subsection (h) of Section 32 directs the Chief Counsel to submit an annual report on Agency compliance with the requirements of the Regulatory Flexibility Act. Further, the Chief Counsel can prepare and submit to the President and Congress such reports as he or she deems necessary. In no case shall a report from the Office of Advocacy be submitted in advance to OMB for approval or Administration clearance.

Subsection (i) of Section authorizes to be appropriated such sums as are necessary for the Office of Advocacy.

A new Subsection (c) permits the incumbent Chief Counsel for Advocacy to continue to serve in that position after date of enactment of this Act in accordance with the requirements of Section 32 of the Small Business Act.